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Supreme Court of the United States

October Term, 1965

No. 985

COLONIAL PIPELINE COMPANY,
Appellant,

v.

COMMONWEALTH OF VIRGINIA,
Appellee.

Appeal From The Supreme Court of Appeals of Virginia

RESPONSE TO BRIEF IN OPPOSITION TO MOTION TO DISMISS

In the Brief in Opposition to Motion to Dismiss, counsel has taken issue with the comment made by us on page 13 of our Response and Motion to Dismiss. We quote from the footnote on page 3 of the Brief in Opposition to Motion to Dismiss:

"*Blodgett* v. *Holden*, 275 U.S. 142 (1927); *Untermyer* v. *Anderson*, 276 U.S. 440 (1928). One is struck by certain comments made in the Motion. As to these cases, the Appellee says:

"'. . . the statutes have been applied to transactions (gifts) which have been consummated and the property vested thereby years and years before the legislation was enacted. . .' (Motion, p. 13).

"In *Blodgett* the gift was made in January, 1924; in *Untermyer* the gift was made on May 23, 1924. In each case, the unconstitutional statute became effective on June 2, 1924."

In making this comment, we, of course, had reference to the case of *Nichols* v. *Coolidge*, 274 U.S. 531, 74 L. Ed. 1184, on which the decisions of both *Blodgett* and *Untermyer* were grounded. The transactions (gifts in the form of conveyances of real estate) were completed and interest vested in 1907 and 1917. The Act of Congress was enacted on February 24, 1919. Mrs. Coolidge died in 1921. The same Act of Congress was under review in these two cases (*Blodgett* and *Untermyer*). In the latter case, Justices Brandeis, Holmes and Stone disagreed with the majority opinion which held that the Act of Congress was unconstitutional as violative of the due process clause of the Fifth Amendment. In the opinion of Justice Brandeis, a great number of cases sustaining the validity of retroactive tax statutes are cited. We find this succinct statement, "except for the peculiar tax involved in *Nichols* v. *Coolidge* . . ., no federal revenue measure has ever been invalid on the score of retroactivity." (276 U.S. 449).

We are unable to find where this Court has extended the doctrine in the *Blodgett* and *Untermyer* cases to cover all retroactive tax legislation. Our research indicates just the

opposite. See, pages 12 to 21 of our Response and Motion to Dismiss.

The petition for an appeal should be dismissed.

Respectfully submitted,

ROBERT Y. BUTTON
Attorney General of Virginia

D. GARDINER TYLER
Assistant Attorney General

Supreme Court–State Library Building
Richmond, Virginia 23219

May 13, 1966

CERTIFICATION

I certify that copies of the foregoing Response to Brief in Opposition to Motion to Dismiss were mailed to H. Brice Graves, Esq.; Ralph H. Ferrell, Jr., Esq., John W. Riely, Esq., Richard G. Joynt, Esq., 1003 Electric Building, Richmond, Virginia 23212, Jack Vickrey, Esq., Howard D. McCloud, Esq., and Ross Arnold, Esq., 3390 Peachtree Road, N.E., Atlanta, Georgia 30326, counsel for the appellant, this 13th day of May, 1966.

D. GARDINER TYLER
Assistant Attorney General

END